

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

Court of Appeals, District of Columbia

APRIL TERM, 1903.

No. 1318

219

WILLIAM H. McCAFFREY, JAMES B. McCAFFREY,
EDWARD QUIGLEY, CATHERINE L. QUIGLEY, MAR-
GARET QUIGLEY, AND JOSEPH QUIGLEY AND MARY
QUIGLEY, BY EDWARD QUIGLEY, THEIR GUARDIAN
AD LITEM, APPELLANTS,

vs.

LIZZIE C. MANOGUE, GEORGE W. MANOGUE, AND
FRANK FOLEY,

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 11, 1903.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1903.

No. 1318.

WILLIAM H. McCaffrey, JAMES B. McCaffrey,
EDWARD QUIGLEY, CATHERINE L. QUIGLEY, MAR-
GARET QUIGLEY, AND JOSEPH QUIGLEY AND MARY
QUIGLEY, BY EDWARD QUIGLEY, THEIR GUARDIAN
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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption.....	<i>a</i>	1
Bill	1	1
Appointment of guardian for Frank Foley.....	11	7
Appointment of guardian for Mary and Joseph Quigley.....	11	7
Answer of Frank Foley by guardian.....	12	8
Answer of Mary Quigley <i>et al.</i> by guardian.....	13	8
Answer of Lizzie C. Manogue.....	14	8
Answer of George W. Manogue.....	17	11
Replication.....	21	12
Decree <i>pro confesso</i>	21	13
Offers of evidence on behalf of defendants.. ..	22	13
Decree	24	14
First and final account of collectors of estate of Hugh McCaffrey.	25	15
Order approving account of collectors of estate of Hugh Mc- Caffrey.....	27	15
First and final account of executors of will of Hugh McCaffrey.	28	16
Order approving account of executors of will of Hugh McCaffrey.	30	17
Certificate of register of wills.....	31	17

	Original.	Print
Testimony for complainant.....	32	18
Testimony of Orrin B. Hallam.....	34	19
Cross-examination.....	36	20
Memorandum as to exhibits	41	22
Complainants' Exhibit No. 3—Certificate of assessment.....	41	22
Final decree.....	42	23
Motion to amend decree	43	24
Motion to amend decree overruled.....	45	25
Appeal and penalty of appeal bond fixed.....	46	25
Memorandum : Appeal bond filed.....	46	25
Clerk's certificate.....	47	26

In the Court of Appeals of the District of Columbia.

WILLIAM H. McCaffrey ET AL., Appellants, }
vs. } No. 1318.
LIZZIE C. MANOGUE ET AL.

a Supreme Court of the District of Columbia.

WILLIAM H. McCaffrey and JAMES B. }
McCaffrey, Complainants, }
vs. }
LIZZIE C. MANOGUE, GEORGE W. MANOGUE, } No. 23390. Equity.
Catherine Quigley, Margaret Quigley, Mary }
Quigley, Edward Quigley, Joseph Quigley, }
and Frank Foley, Defendants. }

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:—

1 Bill.

Filed Jul- 1, 1902.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCaffrey and JAMES B. Mc- }
Caffrey, Complainants, }
vs. }
LIZZIE C. MANOGUE, GEORGE W. MANOGUE, } Equity. No. 23390,
Catherine Quigley, Margaret Quigley, Mary } Doc. 52.
Quigley, Edward Quigley, Joseph Quigley, }
and Frank Foley, Defendants. }

The bill of complaint of William H. McCaffrey and James B. McCaffrey shows:—

1. Complainant William H. McCaffrey is a resident of the District of Columbia, and complainant James B. McCaffrey is a resident of Hot Springs, Arkansas. They sue in their own right as hereinafter shown.

2. The defendants are all residents of the District of Columbia, and each is sued in his or her own right. The defendants Catherine L. and Edward Quigley also being sued as trustees under the will of Mary A. Quigley. The defendants Mary Quigley, Joseph Quigley and Frank Foley are infants under the age of twenty-one (21) years, that is to say, of the ages of about sixteen (16) years, nineteen (19) years, and eighteen (18) years, respectively.

3. Complainants further show that they are sons of Hugh McCaffrey, late of the District of Columbia, who departed this life on, to wit, the ninth day of March, 1897, leaving surviving him as his only heirs at law his children James B. McCaffrey, William H. McCaffrey, Francis T. McCaffrey, Lizzie C. Manogue and Mary A.

2 Quigley, and his grandson the defendant Frank Foley, who is the son of his daughter Catherine, deceased. Complainants further show that the said Mary A. Quigley afterward, to wit, July 10, 1897, died leaving as her only heirs her four children, the defendants Catherine L., Margaret, Mary and Joseph Quigley, and leaving a husband, the defendant Edward Quigley, and leaving a will, afterwards duly admitted to record, whereby she devised all her estate in trust to Catherine L. and Edward Quigley, in trust for her children. The said Francis T. McCaffrey, son of the said Hugh, died October 20, 1898, testate and unmarried, his heirs at law being his brothers and sister above named, the children of his said deceased sister, Mary A. Quigley, and the said Frank Foley, his nephew.

4. Complainants further show that by the will of the said Hugh McCaffrey, duly proven and admitted to probate, and record in the supreme court of the District of Columbia and dated on the thirtieth (30) day of April, 1896, said testator undertook to divide and distribute all his estate, both real and personal, among his several children and his grandchild, the said Frank Foley. Said will was in the following words and figures, that is to say:—

“ WASHINGTON, DISTRICT OF COLUMBIA,
April Thirtieth, 1896.

In the name of God, being now in good health and sound in mind and body I hereby certify and declare this to be my last will and testament, hereby annulling and revoking any and all wills previously made.

I give and bequeath to my daughter Mary A. Quigley house number 301 at southwest corner of 11th and C streets southeast, being in lot number 5, in square 970, with the store and dwelling, stock and fixtures, and lot on which it stands, also houses numbers 13 and 15 6th street southeast with lots on which they stand, being parts of lots 19 and 20 in square number 841, also any money in bank to my account at the time of my death, also any money due to me, also any building association stock. She is to pay funeral expencies and any other legal debts I may owe, also to care for my lot in Mount Olivet cemetrey.

I give and bequeath to my son, James B. McCaffrey, house num-

ber six hundred and two (602) East Capitol street and lot on which it stands, being in lot number ten (10) in square number eight hundred and sixty-eight (868).

To my son, William H. McCaffrey, I give and bequeath house 604 East Capitol street, being in lot number ten (10), in square number eight hundred and sixty-eight (868) and lot on which it stands.

To my daughter, Lizzie Manogue, I give and bequeath house number fourteen hundred and twenty-three (1423) Corcoran street N. W., and lot on which it stands, being lot number fifty-four (54) in square number two hundred and eight (208).

2. To my son, Francis T. McCaffrey, I give and bequeath house five hundred and nineteen (519) East Capitol street, and lot on which it stands, being part of lot number twenty (20) in square eight hundred and forty-one (841), also my horse and buggy.

And to my grandson, Frank Foley, I give and bequeath house number one hundred and twenty-one (121) Eleventh street, S. E.,
4 being in lot number fourteen (14), square number nine hundred and sixty-eight (968), and lot on which it stands.

To my grandson Joseph Quigley, I give and bequeath my watch and chain.

I hereby name and appoint as executors of this my last will and testament, John E. Herrell and Patrick Maloney.

All the real estate herein described is located in the city of Washington, District of Columbia.

HUGH McCAFFREY. [SEAL.]

In the presence of the testator and of each other we have hereunto set out signatures as witnesses to the signature of Hugh McCaffrey, who signed the same in the presence of us and each of us and declared the foregoing instrument to be his last will and testament.

MAURICE OTTERBACK,
1100 9th St. S. E., Wash'n, D. C.

JOHN RIORDON,
922 Pa. Ave. S. E., Wash'n, D. C.

HENRY H. McKEE,
127 4th St. S. E., Wash'n, D. C."

4. Complainants further show that the several parcels of real estate mentioned in said will were all owned in fee simple absolute by the said Hugh McCaffrey and were all the real estate owned by him at the time of the making of his said will and at the time of his death; and the personal property by said will bequeathed was all that he owned at his death except about one hundred (100) dollars in money and a small amount of household furniture.

5. This complainant James B. McCaffrey heretofore sold and conveyed to the defendant George W. Manogue, as in fee simple, the real estate devised to him by said will, that is to say house number 602 East Capitol street and lot on which it stands as well as all other interest in his said deceased father's

estate, but said William H. McCaffrey retains the property by said will devised to him, to-wit, "House 604 East Capitol street being in lot number ten (10) in square number eight hundred and sixty-eight (868) and lot on which it stands."

6. Complainants further show that the last will and testament of the said Francis T. McCaffrey, who, as aforesaid stated, died after his said father, to-wit, October 20, 1898, was in words and figures following, that is to say,

I, Frank T. McCaffrey, of the city of Washington, District of Columbia, hereby revoking any and all wills by me at any time heretofore made, do make, publish and declare this to be my last will and testament; that is to say:

I direct my executor hereinafter named to pay all my just debts out of any estate which I may own at the time of my death.

I give, devise and bequeath any and all estate, real, personal or mixed, wheresoever the same may be situated and whensoever the same may be acquired by me, which I may own, or in which I may have any interest, or to which I may be in any manner entitled at the time of my death, to my beloved sister, Lizzie C. Manogue and to my beloved brothers, William H. McCaffrey and James B. McCaffrey, in equal shares.

To have and to hold the sale unto the said Lizzie C. Manogue, William H. McCaffrey and James B. McCaffrey, absolutely and in fee-simple, according to the nature of the property, as tenants
6 in common but not as joint tenants, it being my will that my said sister Lizzie and my said brothers William H. and James B. shall each receive one-third part of my estate aforesaid absolutely and in fee-simple, according to the nature of the property.

I nominate, constitute and appoint my beloved brother William H. McCaffrey to be the sole executor of this my last will and testament, and request that he be not required to give bond for his faithful performance of his duties as such.

In testimony whereof, I have hereunto set my hand and seal this eighteenth day of October, A. D., 1898.

his
FRANK T. x MCCAFFREY. [SEAL.]
mark.

Witnesses to mark:

OSCAR LUCKETT.

MARGARET B. FIELDS.

ELIZABETH S. MALLETT.

Signed, sealed, published and declared by the above-named testator, Frank T. McCaffrey, in our presence, who, in his presence and at his request and in the presence of each other, have subscribed our names as witnesses thereto.

OSCAR LUCKETT.

MARGARET B. FIELDS.

ELIZABETH S. MALLETT.

Complainants show that at the time of the death of the said Francis T. McCaffrey he was seized and possessed of the said premises, part of lot 20, in square 841, so as aforesaid devised to him by his father, Hugh McCaffrey, and it was the true intent and meaning of his said will that this property should pass in fee simple to these complainants and the said Lizzie C. Manogue as equal tenants in common.

But so it is that upon endeavoring to make sale of the said premises as owners in fee simple thereof, it was and yet is suggested by persons who would otherwise purchase the same that it is doubtful if the said Francis T. McCaffrey was possessed of a fee simple title to said property upon which his will aforesaid might operate, or if any one of the devisees of the said Hugh McCaffrey took more than an estate for his or her life in the premises devised, a reversionary right to each of said parcels remaining to the heirs at law of said Hugh; for that the said several devises are made without words of inheritance and do not in terms declare that any of them is a devise in fee simple: Wherefore doubt has arisen as to the extent and right of your complainant and the said Lizzie C. Manogue in said property so devised by said Hugh McCaffrey to Francis McCaffrey and by the latter devised to the complainants and the said Lizzie, and as to the right of your complainant William H. McCaffrey in the premises 604 East Capitol street so devised to him by said Hugh McCaffrey, and a cloud is cast upon said several titles, the suggestion of defect being in substance that the said Francis T. McCaffrey and the said William H. McCaffrey each took only an estate for life under the said devises, and that at the death of said Francis the said property 519 East Capitol street reverted to the estate of said Hugh and became the property of his heirs at law, that is to say of these complainants and the defendants (excepting George W. Manogue) according to their several rights as children and grandchildren of the said Hugh, the said George W. Manogue having by assignment from the complainant James B. his rights therein. Your complainants are advised, and so aver, that the said will of Hugh McCaffrey was operative to vest in each of the said devisees an estate in fee simple in the premises devised to him and that the absence of words of inheritance in the said paragraphs in which the said Francis T. McCaffrey and the said William H. McCaffrey are named is not a controlling fact in the construction of said will; in view of the other facts hereinbefore stated and further, that because there was by the said will imposed upon the said Mary A. Quigley the personal duty to pay the funeral expenses and the legal debts of the testator an estate in fee simple passed to her, the said Mary, in the several parcels of land devised to her, although there was in said devise no words of inheritance, and because it is apparent from the said devise to the said Mary that it was the clear intention of said testator to invest her with all his title in the said several lots so devised to her, that such intention must be found to have existed in respect to the several other devises so by said will made to the said

James B. McCaffrey, William H. McCaffrey, Lizzie C. Manogue, Francis T. McCaffrey and Frank Foley, similar language being employed in each of these devises as is employed in the said devise to Mary A. Quigley.

Complainants are advised that they are entitled to have the said will of the said Hugh McCaffrey construed by this honorable court as to the devises so made to the said Francis T. McCaffrey and the said William H. McCaffrey, and to have it determined what estate each of the said devisees took thereby, and to have their title quieted as against any person or persons who may claim adversely to the same as heirs of said Hugh McCaffrey or under such heirs.

The premises considered, your complainants pray as follows:—

9

Prayers.

1. That process of subpoena may issue against the said defendants Lizzie C. Manogue, George W. Manogue, Catherine L. Quigley, Margaret Quigley, Mary Quigley, Joseph Quigley, Edward Quigley, and Frank Foley, and that they may be required to answer this bill upon their corporal oaths.

2. That a guardian or guardians *ad litem* may be appointed to appear and answer on behalf of the said infant defendants Mary Quigley, Joseph Quigley and Frank Foley.

3. That a decree may be passed construing the will of the said Hugh McCaffrey, and declaring that by the devise therein to Francis T. McCaffrey, said devisee, took all the estate which the said Hugh McCaffrey had at his death, in the premises so devised, that is to say premises 519 East Capitol street and that by the devise to

the complainant William H. McCaffrey of premises 602 East Capitol street he took all the estate which the said Hugh had therein at his death, that is to say, an estate in fee simple in each case.

4. That complainants may have such other and further relief as the nature of the case may require and the court has power to grant.

The defendants to this bill are Lizzie C. Manogue, George W. Manogue, Catherine L. Quigley, Margaret Quigley, Mary Quigley, Edward Quigley, Joseph Quigley and Frank Foley.

WILLIAM H. MCCAFFREY,
JAMES B. MCCAFFREY,
By O. B. HALLAM.

HALLAM & HALLAM,
BIRNEY & WOODARD,
Attorneys for Complainants.

10 DISTRICT OF COLUMBIA, ss :

I do solemnly swear that I have read the bill of complaint by me subscribed, and know the contents thereof, and that the facts therein

stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

WILLIAM H. McCAFFREY.

Sworn to and subscribed before me this 1st day of July, 1902.

WILLIAM ABBE,

[NOTARIAL SEAL.]

Notary Public, D. C.

11 *Order Appointing Oscar Luckett Guardian.*

Filed July 7, 1902.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCAFFREY ET AL.	} No. 23390. In Equity.
vs.	
LIZZIE C. MANOGUE ET AL.	

It appearing to the satisfaction of the court that the defendant Frank Foley is an infant over the age of fourteen years, and the said Frank Foley having been duly served with process, and being now present in court and the said Frank Foley having in open court selected Oscar Luckett to be his guardian *ad litem* herein, it is by the court this seventh day of July, 1902, adjudged, ordered and decreed that said Oscar Luckett be and he hereby is appointed guardian *ad litem* for said infant defendant Frank Foley to appear and answer herein for him.

E. F. BINGHAM,
Chief Justice.

Order Appointing Edward Quigley Guardian.

Filed July 14, 1902.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCAFFREY ET AL., Plaintiffs,	} In Equity. No. 23390, Docket 52.
vs.	
LIZZIE C. MANOGUE ET AL., Defendants.	

12 The defendants Mary Quigley and Joseph Quigley, infants over the age of 14 years appeared personally in court and made choice of their father Edward Quigley as their guardian *ad litem*.

It is therefore, this 14th day of July, 1902, ordered that said Edward Quigley be and he is hereby appointed as guardian *ad litem* to defend for said infant defendants.

E. F. BINGHAM,
Chief Justice.

Answer of Frank Foley, by His Guardian ad Litem.

Filed November 1, 1902.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCAFFREY ET AL.	} No. 23390.
vs.	
LIZZIE C. MANOGUE ET AL.	

The answer of Frank Foley, by his guardian *ad litem*, to the bill of complaint of the above named complainant against him and others in chancery exhibited.

This defendant being an infant under the age of twenty one years can neither admit nor deny any of the matters and things in the said bill contained, and submits his rights in the premises to the protection of the court.

FRANK FOLEY,
By OSCAR LUCKETT,
His Guardian ad Litem.

I do solemnly swear that I have read the annexed and foregoing answer by me subscribed and know the contents thereof and
13 that the matters and things therein stated on my personal knowledge are true and those stated on information and belief I believe to be true.

OSCAR LUCKETT.

Subscribed and sworn to before me this 1st. day of November, 1902.

J. R. YOUNG, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

Answer of Mary Quigley et al., by Guardian ad Litem.

Filed November 4, 1902.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCAFFREY ET AL., Plaintiffs,	} In Equity. No. 23390.
vs.	
LIZZIE C. MANOGUE ET AL., Defendants.	

The defendants Mary Quigley and Joseph Quigley answering by their guardian *ad litem*, Edward Quigley, say that they are infants and know nothing of the matters and things alleged in the bill of complaint and that they submit their rights to the protection of the court.

EDWARD QUIGLEY,
Guardian ad Litem.

Subscribed and sworn to before me this 4th day of October, 1902.

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Cl'k*.

14

Answer of Defendant Lizzie C. Manogue.

Filed January 27, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCaffrey ET AL., Complain-	} Equity. No. 23390.
ants,	
vs.	
LIZZIE C. MANOGUE ET AL., Defendants.	

Comes now the above-named Lizzie C. Manogue, party defendant herein, and, for separate answer to the bill of complaint herein, says:

1, 2, 3, 4 and 5. She admits the averments contained in the first, second, third, fourth and fifth paragraphs of said bill, except that, for greater certainty, she insists that there be filed herein a duly authenticated copy of the last will and testament of Hugh McCaffrey, deceased, instead of the unauthenticated copy thereof which is purported to be set forth in said paragraph four.

6. She admits the death, testate, of Francis T. McCaffrey, as in said paragraph six alleged; but, for greater certainty, she insists that, so far as the same may be, or hereafter become, material or important herein, a duly authenticated copy of the last will and testament of said Francis T. McCaffrey, deceased, be filed herein instead of the unauthenticated copy thereof which is purported to be set forth in said paragraph.

15 She admits that, according to the terms of the said last will and testament of said Francis T. McCaffrey, it was evidently his purpose and intention to pass, to the devisees therein named, including this defendant as tenants in common, an estate in fee simple in and to the property by him therein and thereby devised; but she is advised, and, therefore, so avers, that in law, no greater estate or interest therein was or could be by him devised than he possessed.

She admits that question has arisen whether the said Francis T. McCaffrey was possessed in fee simple of the property so by him attempted to be devised in fee simple, as aforesaid, as well also whether any one of the several devisees under the said last will and testament of the said Hugh McCaffrey, deceased, took more than an estate for life, with remainder to the heirs at law of said last-named testator, inasmuch as said several devises are, and each thereof is, made without words of inheritance, and do not, either in express terms, or otherwise however, declare that any or either thereof is a devise in fee simple.

She further avers that, in certain proceedings in equity heretofore

instituted by the complainants herein against this respondent, for the partition of the property so attempted to be devised, in fee simple, by the said Francis T. McCaffrey, and in which a decree of sale was passed, and trustees appointed, certain of the property so devised was sold; but that, thereafter, upon proceedings in that behalf therein had, the purchaser thereof was relieved of said purchase because of the question as aforesaid, as to the extent of the interest possessed by said testator, the said Francis T. McCaffrey, in the property so attempted to be devised, namely, whether he
 16 was seized and possessed in fee simple, absolute, or was merely possessed of a life estate therein; and that the order and decree of this court, so relieving said purchaser, as aforesaid, was, subsequently, affirmed, on appeal, by the Court of Appeals of the District of Columbia, because of the same question and doubt, as aforesaid; as will more fully appear by reference to the proceedings in said cause had, and now remaining of record in this court, in equity, No. 22,346, reference to all of which proceedings so had in said cause is hereby made.

For further answer to the averments in said paragraph contained, this defendant says, that she is advised, and, therefore, so avers, that upon the true construction of the last will and testament of the said testator, Hugh McCaffrey, deceased, an estate in fee simple in and to the several parcels of real estate therein and thereby devised did not pass to the several devisees therein named, nor to any or either of them, but that merely a life estate passed in respect of each and every of said several devisees, with remainder, in fee, to the heirs at law of him, the said Hugh McCaffrey.

Wherefore, the premises considered, this defendant prays, that such decree be entered herein as may be appropriate and necessary to affirmatively declare that the said several devises in the last will and testament of the said Hugh McCafferty, deceased, contained, as aforesaid, passed merely a life estate to the several devisees therein named, with remainder in fee to the heirs at law of said testator as aforesaid.

LIZZIE C. MANOGUE,
Party Defendant.

A. A. HOEHLING, JR.,
Solicitor for said Defendant.

17 Verification waived :
 HALLAM & HALLAM,
Sol'rs for Pl't'ffs.

DISTRICT OF COLUMBIA, ss :

Before me, the undersigned, personally appeared Lizzie C. Manogue, who, being by me first duly sworn, on oath, says: That she has read the foregoing answer by her subscribed, and knows the contents thereof; that the several matters and things therein stated of her own knowledge are true; and those stated upon information and belief, she believes to be true.

LIZZIE C. MANOGUE.

Subscribed and sworn to before me this — day of —, A. D. 1902.

— — —.

Answer of George W. Manogue.

Filed January 27, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCaffrey ET AL., Complain-	}	Equity. No. 23390.
ants,		
vs,		
GEORGE W. MANOGUE ET AL., Defendants.		

Comes now the above-named George W. Manogue, party defendant herein, and, for separate answer to the bill of complaint herein, and to so much and such parts thereof as he is advised it is necessary to be by him answered, says:

18 1, 2, 3, 4 and 5. He admits the averments contained in the first, second, third, fourth and fifth paragraphs of said bill, except that, for greater certainty, he insists that there be filed herein a duly authenticated copy of the last will and testament of Hugh McCaffrey, deceased, instead of the unauthenticated copy thereof which is purported to be set forth in said paragraph four.

6. He admits the death, testate, of the said Francis T. McCaffrey, as in said paragraph six alleged; but, for greater certainty, he insists that, so far as the same may be, or hereafter become, material or important herein, a duly authenticated copy of the last will and testament of said Francis T. McCaffrey, deceased, be filed herein, instead of the unauthenticated copy thereof which is purported to be set forth in said paragraph.

He admits that, according to the terms of the said last will and testament of said Francis T. McCaffrey, deceased, it was evidently his purpose and intention to pass, to the devisees therein named, as tenants in common, an estate in fee simple in and to the property by him therein and thereby devised; but he is advised, and, therefore, so avers, that, in law, no greater estate or interest therein was or could be by him devised than he possessed.

He also admits that question has heretofore arisen, and still exists, as to the extent of the estate and interest devised by the terms and provisions of the last will and testament of the said Hugh McCaffrey, deceased, to the several devisees therein named, that is to say, whether an estate in fee simple absolute passed to any
 19 or either of said several devisees, or merely a life estate, with remainder in fee to the heirs at law of him, the said Hugh McCaffrey; as will more fully appear by reference to the proceedings heretofore had in a certain other cause in this court, in equity No. 22,346, now remaining of record in this court, wherein the complainants herein were complainants, and Lizzie C. Manogue, party defendant herein, was defendant.

This defendant can neither admit nor deny the other averments in said paragraph contained, in respect of the extent of the title, interest and estate devised by the said testator, Hugh McCaffrey, to the several devisees named in his said will, or to any or either of them; nor whether upon the true construction of said will, the several devises therein contained were in fee simple, or merely passed a life estate, with remainder in fee to the heirs at law of said testator.

Wherefore, the premises considered, this defendant submits his rights and interests to the proper protection of the court, and prays, that such decree be entered herein, as may be appropriate and necessary to affirmatively establish, declare and settle the extent of the title, interest and estate passed by the several and respective devises in said will contained.

GEORGE W. MANOGUE,
Party Defendant.

A. A. HOEHLING, JR.,
Solicitor for said Defendant.

Verification waived:
HALLAM & HALLAM,
Sol'rs for Pl't'ffs.

20 DISTRICT OF COLUMBIA, ss:

Before me, the undersigned, personally appeared George W. Manogue, who being by me first duly sworn, on oath says: That he has read the foregoing answer by him subscribed, and knows the contents thereof; that the several matters and things therein set forth and stated of his own knowledge are true, and those stated upon information and belief, he believes to be true.

Subscribed and sworn to, before me, this — day of — A. D. 1902.

21

Replication.

Filed February 5, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. MCCAFFREY ET AL.	}	In Equity. No. 23390.
vs.		
LIZZIE C. MANOGUE ET AL.		

The plaintiffs hereby join issue on the answers of the defendants heretofore filed in this cause.

BIRNEY & WOODARD,
HALLAM & HALLAM,
Solicitors for Plaintiffs.

Decree Pro Confesso.

Filed February 5, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCAFFREY ET AL.	} In Equity. No. 23390.
vs.	
LIZZIE C. MANOGUE ET AL.	

The defendants Catherine L. Quigley, Edward Quigley, and Margaret Quigley, having been duly summoned to appear and answer the bill of complaint, and having failed to do so,

It is this 5th day of February, A. D. 1903, adjudged, ordered and decreed that the bill of complaint be taken *pro confesso* as to said defendants Catherine L. Quigley, Edward Quigley and Margaret Quigley.

ASHLEY M. GOULD, *Justice.*22 *Offers of Evidence on Behalf of Manogue.*

Filed March 23, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCAFFREY	} In Equity. No. —.
vs.	
LIZZIE MANOGUE ET AL.	

WASHINGTON, D. C., *March 21st, 1903—12 o'clock m.*

Met pursuant to notice at the office of Padgett & Forrest, Stewart building, corner Sixth and D streets, northwest.

Present: Mr. Hallam of counsel for the complainant; Mr. A. A. Hoehling, Jr., and Mr. Edwin Forrest, solicitors for the defendants Manogue, and Oscar Luckett guardian *ad litem* for the infant Frank Foley, and Edward Quigely, guardian *ad litem* for the infants Mary and Joseph Quigley.

Mr. FORREST: On behalf of the defendants Manogue we here offer in evidence true and certified copies under the hand and seal of the supreme court of the District of Columbia, holding a probate court, by its deputy register of wills for the District of Columbia of the following papers and records in the office of the said 'supreme court in the matter of the estate of Hugh McCaffrey, deceased, No. 7709 on the docket of said court, administration docket 23.

First. The decree of March 11, 1898 admitting to probate and record as a will of personal property the last will and testament of the late Hugh McCaffrey, dated April 30th, 1896, and granting
23 letters testamentary thereon to the executors named in said will.

Second. The first and final account of Edwin Forrest and Orrin B. Hallam, collectors of the estate of Hugh McCaffrey, deceased approved and passed by the court on February 16, 1901.

Third. First and final account of John E. Herrell and Patrick Maloney, executors of the will of Hugh McCaffrey, deceased, approved and passed by the court under date of the 4th day of March, 1902.

We have no further evidence to offer.

JNO. E. McNALLEY, *Examiner.*

I, John E. McNalley, an examiner in chancery do hereby certify that the foregoing and annexed proceedings took place before me at the time and place named in the caption hereof, I further certify that I am not of counsel for either party and have no interest in the subject of this suit.

That my fee for taking said session is \$5 which has been paid, by the defendant Lizzie Manogue.

JNO. E. McNALLEY,
Examiner-in-Chancery.

24

Filed March 23, 1903.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of HUGH MCCAFFREY.

Upon consideration of the certificate of the clerk of the supreme court of the District of Columbia, filed herein as to the verdict of the jury upon the several issues heretofore sent to the special term of the circuit court, and upon motion of counsel for John E. Herrell and Patrick Maloney the caveatees;

It is this 11th day of March 1898, adjudged, ordered and decreed that the paper writing filed in this court on the 12th day of March 1897, dated the 30th day of April 1896 purporting to be the last will and testament of Hugh McCaffrey deceased be and the same is hereby admitted to probate and record as a will of personal property and that letters testamentary issue to said John E. Herrell and Patrick Maloney as executors of said last will and testament upon their giving bond with sureties approved by the court in the sum of nine thousand dollars.

A. B. HAGNER,
Asso. Justice.

From this order the caveators, Lizzie Manogue and James B. McCaffrey, appeal in open court to the Court of Appeals of the District of Columbia and request the court to fix the amount of the supersedeas bond, which the court orders be in the penalty of three hundred dollars.

A. B. HAGNER,
Asso. Justice.

M'ch 11/98.

25

No. 7709, adm'n doc. 23.

Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

First and Final Account of Edwin Forrest and Orrin B. Hallam, Collectors of the Estate of Hugh McCaffrey, Deceased.

Letters issued April 13, 1897.

These accountants charge themselves with the following, to wit:

Amount collected from German American Building Association.....	1040.
Cash from bank	672.75
" " Metropolis Building Association ..	2120.

They claim credit for the following, to wit:

1897.

June 17. By paid Northwestern Nat. Ins. Co...	Vou. 1..	1.
July 23. By paid George P. Zurhorst, funeral expenses....	" 2..	170.

1898.

M'ch 31. " " John McLaughlin, carriages for funeral	" 3..	36.
June 17. " " Northwestern Nat. Ins. Co.	" 4..	1.
Aug. 1. " " register of wills, court costs..	" 5..	18.86

1899.

Feb'y 1. " " executors of Mary A. Quigley, dec'd, per order of court of Jan'y 31, 1899...	" 6..	581.
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1901.

Feb'y 1. " " Orrin B. Hallam, attorney's fee and printing expenses, per order of court of Jan'y 31, 1901.....	" 7..	505.60
26 By paid register of wills, this account. Vou. 8..		9.75
" " commission on \$3832.75 (a) 3 %		114.98

Balance.....	1438.19
	2394.56

\$3832.75	\$3832.75
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Balance down.....	\$2394.56
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Distributable as follows, to wit:

To John E. Herrell and Patrick Maloney, executors of Hugh McCaffrey deceased.....	2394.56
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\$2394.56	\$2394.56
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EDWIN FORREST,
ORRIN B. HALLAM,
Collectors.

27 DISTRICT OF COLUMBIA, To wit:

OFFICE OF THE REGISTER OF WILLS,
February 16th, 1901.

This day appeared Edwin Forrest and Orrin B. Hallam collectors of the estate of Hugh McCaffrey, deceased as aforesaid, and made oath on the Holy Evangelists of Almighty God that the foregoing account, as stated is just and true, that they have *bona fide* paid, or secured to be paid, the several sums for which they claim credit and allowance.

Test:

LOUIS A. DENT,
Register of Wills for the District of Columbia.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

On this 16th day of February, A. D. 1901, the foregoing account being now presented for approval, the same is after examination by the court approved and passed. CHAS. C. COLE, *Justice*.

28 Supreme Court of the District of Columbia, Holding a Probate Court.

Estate of HUGH MCCAFFREY, Deceased. No. 7709, Administration.
First and Final Account of John E. Herrell and Patrick Maloney, Executors of the Will of Hugh McCaffrey, Deceased.

			Disbursements.	Receipts.
		These accountants charge themselves with the following to wit:		
		Cash received of Edwin Forrest and Orrin B. Hallam, collectors.....		\$2,394 56
		Net proceeds of sale of household furniture..		25 11
				<u>\$2,419 67</u>
1901.		They claim credit for the following to wit:		
M'ch	5	By paid Jno. McLaughlin..... Vou. 1....	\$17 40	
"	5	" " W. W. Powers..... " 2 ...	6 80	
"	"	" " W. P. C. Hazen, M. D..... " 3....	30 00	
"	"	" " Frank Pitzer..... " 4....	2 60	
"	"	" " Maria Mills..... " 5. .	16 00	
"	14	" " appraisers ... " 6....	12 00	
Oct.	22	" " O. B. Hallam..... " 7...	5 50	
Oct.	23	" " register of wills, court costs. " 8....	24 10	
		" commission on \$2,419.67 (a) 10 %.....	241 97	
		" paid register of wills, accrued costs & this account..... " 9....	12 36	
			<u>368 73</u>	
		Balance.....	2,050 94	
			<u>\$2,419 67</u>	<u>\$2,419 67</u>
29		Balance down.....		\$2,050 94
		Distributable in accordance with the will of testator, as follows to wit		
		To Mary A. Quigley, deceased all.. \$2,050.94	\$2,050 94	
1901.		Less advances as follows		
M'ch	5	Per receipt..... \$1,000.00		
June	20	" " 250.00		
		Forward..... \$1,250.00 \$2,050.94	\$2,050 94	\$2,050 94
(2d page)		Brought forward.. \$1,250.00 \$2,050.94	\$2,050 94	\$2,050 94
1901.		Per receipt 100.00		
Nov.	21	<u>\$1,350.00</u> 1,350.00		
		Bal. due estate of Mary A. Quigley deceased..... 700.94		
			<u>\$2,050 94</u>	<u>\$2,050 94</u>

30 DISTRICT OF COLUMBIA, *To wit:*

We, John E. Herrell and Patrick Maloney, executors of the will of Hugh McCaffrey late of the District of Columbia deceased, do solemnly swear that the foregoing account is just and true, and that we have *bona fide* paid, or secured to be paid, the several sums for which we claim credit and allowance.

JOHN E. HERRELL.
PATRICK MALONEY.

Sworn to and subscribed before me this 3rd day of March, A. D. 1902.

LOUIS A. DENT,
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

In the Supreme Court of the District of Columbia, Holding a Probate Court.

On this 4th day of March, A. D. 1902, the foregoing account, being now presented for approval, the same is, after examination by the court, approved and passed.

JOB BARNARD, *Justice.*

31 Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, John R. Rouzer, deputy register of wills for the District of Columbia, clerk of the probate court, do hereby certify, that the foregoing are true copies of the original order of court admitting will to probate and record as to personalty, first and final account of collectors and first and final account of executors, filed and recorded in the office of the register of wills for the District of Columbia, clerk of the probate court, in the matter of the estate of Hugh McCaffrey, deceased. Case No. 7709, adm. docket 23.

I further certify, that I have compared said copies with the original records in said office, and find them to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said probate court, this 21st day of March, A. D. 1903.

[SEAL.]

JOHN R. ROUZER,
Deputy Register of Wills for the District of
Columbia, Clerk of the Probate Court.

32

Testimony for Complainants.

Filed March 25, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. MCCAFFREY ET AL.	} Equity. No. 23390.
vs.	
LIZZIE C. MANOGUE ET AL.	

Be it remembered that at an examination of witnesses begun and held pursuant to notice on the 20th day of February, 1903, at which said examination there were present Orrin B. Hallam, Esq., of solicitors for the complainants, Edwin Forrest and Adolph A. Hoehling, Esqrs., solicitors for the defendants, and Messrs. Edward Quigley and Oscar Lockett, guardians *ad litem* for the infant defendants, personally appeared before me, J. Arthur Lynham, an examiner in chancery of said court, the within named witness—, who being called for and on behalf of the complainants, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters at issue in the above entitled cause, did depose and say what is hereinafter set out as stated by him.

J. ARTHUR LYNHAM, *Examiner.*

33

In the Supreme Court of the District of Columbia.

WILLIAM H. MCCAFFREY ET AL.	} Equity. No. 23390.
vs.	
LIZZIE C. MANOGUE ET AL.	

WASHINGTON, D. C., *February 20, 1903,*
Friday, at 2 o'clock p. m.

Met, pursuant to notice, to take testimony on the part of the complainants in the above entitled cause.

Present: Orrin B. Hallam, Esq., of solicitors for the complainants, Edwin Forrest, and Adolph A. Hoehling, Esqrs., solicitors for certain defendants, and Messrs. Edward Quigley, guardian *ad litem* of Mary and Joseph Quigley, and Oscar Lockett guardian *ad litem* of the infant Frank Foley.

Mr. HALLAM: The plaintiffs submit a certified copy of the will and probate of Hugh McCaffrey in evidence; also a certified copy of the will of Frank T. McCaffrey. This certificate is also offered in evidence.

NOTE.—And the same are filed by the examiner, marked Complainants' Exhibits No. 1, 2 and 3.

Mr. HOEHLING: Is it the certificate of the assessor of taxes?

Mr. HALLAM: Yes.

Mr. HOEHLING: What is the purpose of it?

Mr. HALLAM: For the purpose of showing the real estate that Hugh McCaffrey owned at the time of his death.

34 Mr. HOEHLING: Well, if you put it that way I will have to object to it. If you say for the purpose of showing the property that was assessed in his name on the books of the tax collector, I won't object.

Mr. HALLAM: No; let it go that way.

Mr. HOEHLING: The certified copy of the will of Hugh McCaffrey, together with the certificate, is objected to in the form in which it now is, because the record is evidently incomplete, not containing a record of the admission of said will to probate as a will of personalty. The certificate of the assessor of taxes is objected to, in so far as it is offered for the purpose of showing the property owned by Hugh McCaffrey during the years embraced in said certificate. I have no objection to the certificate, or to the form of proof covering the fact that the properties claimed in it were assessed to Hugh McCaffrey during the years stated in the certificate.

Mr. HALLAM: Well, you have no objection to the statement that that was all that was assessed to him?

Mr. HOEHLING: No.

Thereupon ORRIN B. HALLAM, being first duly sworn, testified as follows:

Sometime in March, 1897, I was requested to act on behalf of the executors of the will of Hugh McCaffrey in the matter of the probate of the will. A petition was filed and later, on account of a contest being made against the will, Mr. Edwin Forrest and myself were appointed collectors of the estate. Acting under what
35 we conceived to be our authority, we took possession of all the real estate, with the exception of the two houses, one occupied by Frank McCaffrey at Sixth and East Capitol streets, and the other occupied by Mrs. Quigley at Eleventh and C streets, southeast. All the real estate that came to our knowledge after inquiry among the persons interested in the estate were the houses mentioned in the will of the testator. We also made inquiry as to personalty, and could find nothing except some \$657.00 in bank, and some stock in two building associations, and some household furniture, and the amount of \$100 which was said to be in his safe at the time of his death, and which Frank McCaffrey took possession of.

Speaking for myself, and to a large extent that matter was left to me by my colleague or co-collector, Mr. Forrest, I made every inquiry to ascertain whether there was any other estate of any kind, but could find none. We took possession of the building association money and the money in bank, and made a request of Frank McCaffrey to turn over the \$100 that he had taken out of the safe. He did furnish to the executors \$20 for the purpose of filing the petition for letters, and later claimed, when called on for the remaining \$80., that he had expended it.

I should add that there is mention of a watch and chain be-

queathed to Joseph Quigley. In relation to that Frank McCaffrey set up a claim that it had been given to him by his father after the date of the will, and we were unable to get possession of it, it being stated by him that he had placed it in pawn somewhere, and that he claimed the absolute right to it.

36 There was also mentioned a horse and buggy as a bequest to Frank McCaffrey, but he, for some reason, or other declined to surrender that, and, in some way or other, made disposition of it later. The household furniture, after the will was finally admitted to probate, the executors got possession of from Mrs. Manogue, who had continued to occupy the property after Frank McCaffrey's death, and it was sold at auction. So far as it was turned over, it was very insignificant, not amounting, perhaps, to more than some \$25. or \$50.

The persons named in the will of Hugh McCaffrey were his sole heirs at law. Mrs. Quigley died a few months later, about the 10th of July 1897, and she left, as her sole heirs, four children, Catherine L., Margaret, Joseph and Mary. They were all then under twenty-one years, but since that date the two older children, Catherine L. and Margaret have become of age.

Mrs. Quigley left a will which is set forth I believe in the bill in this case, whereby she left, in substance, the control of all her property in her husband, Edward Quigley, and her oldest daughter, Catherine L. Quigley, until the youngest child comes of age. I understand that there is no controversy about that being her will, and I simply mention that for the purpose of showing, so far as it may be necessary to show, the interest of her children and husband.

Cross-examination.

By Mr. FORREST:

Q. Do you recall the value of the building association stock?

37 A. I can recall in a general way that there was in one association—I have forgotten its particular name—about \$2140, and in the *only* other about \$1120. There was about \$675 in the bank.

Q. Do you remember the total value of the personal property that came into our hands as collectors, independently of our return and accounting to the executors under the will?

A. Yes, I remember it very distinctly, because I had occasion to look at it. I am quite sure that those three items were the only ones, the two building association shares and the money in bank.

Q. The total of the personal property, then, that came into our hands as collectors, amounted to nearly \$4000.

A. Practically so, yes; \$3800 or \$4,000.

Q. Subsequent to the qualification of yourself and myself as collectors, and during our administration as such, do you recall what debts, if any, we paid out of the personal property coming into our hands as collectors?

A. I can only state that from recollection, in a general way. We

did pay, by authority of the court, the funeral bill. We also made some advances to Mrs. Quigley. There was also deducted a payment to myself, I believe, as attorney for the executors, or for Mrs. Quigley in the matter of the contest of the will, and, in one way or another when the time came to make the payment over to the executors and the settling of our account as collectors, there was about \$2100 turned over. There may possibly have been a few other bills besides the funeral expenses that were authorized to be paid, but I do not recall them just now. The account of the collectors and the receipt of the executor will show those things much more
38 accurately than I could at this time, but I am quite certain in a general way that what I have stated is about correct.

Q. You have, I believe, given the date of the appointment of yourself and myself as collectors. Do you now recall how long we served as such, before our account was settled and we accounted to the executors under the will?

A. I could only state in a general way that it was about four years.

Q. So far as you know, and as counsel for the executors under the will, and with your knowledge of the condition of the estate of Hugh McCaffrey, what debts, if any, were due by the estate at the time that the collectors turned the property over to the executors, and what disposition in the way of payment of any of those debts was made subsequent to that time, if any, existed at that time?

A. There were a few small bills. Speaking from recollection, and I am sure that it is reasonably accurate, they could not have amounted to more than \$100. The collectors had not been authorized to pay any debts of the deceased, except those that related to his funeral expenses. These other small debts amounting to \$100 or less, were paid, to my knowledge, by the executors.

Q. And such payments were made out of the personal estate of the deceased, Hugh McCaffrey?

A. Unquestionably so, and after those payments were made, the residue, whatever it was, was turned over to the executors of Mrs. Quigley.

Q. Well, there was a residue of personal estate after the payment of the debts?

39 A. Unquestionably so.

Q. You testified, I believe in your direct examination that there was first a contest over the will, which was decided in favor of the caveatees, and the will was admitted to probate as to personalty; that is right, isn't it?

A. I don't remember that I testified to that, but that is the fact.

Q. Now, do you recall whether it was after the will contest was decided in that way that we accounted to the executors as collectors, or was it after the will was admitted to probate as to real estate?

A. I will not be certain about that, but my recollection is that the accounting was not made until after the will was admitted to record as a will of real estate. It possibly may have been. It seems to me that there was raised in some way some question about our

duty to account to the orphans' court as collectors of the real estate as well as the personalty, and, in one way or another, the settlement was not made until after the will had been admitted to record as a will of real estate, but, as I have before stated, I think we came to the conclusion that while we had acted under our presumed authority as collectors to take charge of the realty, that that was really not a matter that the orphans' court had jurisdiction of, and that therefore we made an accounting to the orphans' court simply as to the personalty, and settled with the respective heirs or devisees under the will of Hugh McCaffrey for the rents that we had collected from the real estate. I am sure that we made the settlement of the rents directly with the devisees, and not with the orphans' court.

40

ORRIN B. HALLAM.

Subscribed and sworn to before me this 21st day of February, A. D. 1903.

J. ARTHUR LYNHAM, *Examiner*.

The taking of testimony on the part of the complainants is here announced as closed.)

I certify that the foregoing deposition, (comprising 9 typewritten pages) was taken down by me in shorthand, as an examiner in chancery, from the statements when and as uttered by the deponent thereof; that the same was thereafter transcribed and reduced by me into print, and thereupon read and subscribed by the said deponent in my presence.

I further certify that my fee of \$5.00 for taking, certifying and returning said depositions has been paid to me by the complainants.

And I further certify that I am not of counsel, nor in anywise interested in this cause.

J. ARTHUR LYNHAM, *Examiner*.

41

Memoranda.

For Complainant Exhibit No. 1, see page No. 2 of bill.

For Complainant Exhibit No. 2, see page No. 5 of bill.

COMPLAINANT EXHIBIT No. 3.

Filed March 25, 1903.

Certificate of Assessment.

OFFICE OF THE ASSESSOR,
DISTRICT OF COLUMBIA,
WASHINGTON, *February 20, 1903.*

This is to certify that real estate described as follows square 208, sub lot 54; square 841, parts of sub lots 19 and 20; square 868, part of lot 10; square 968, part of lot 14; square 970, part of lot 5,

assessed on the books of this office was the only real estate in the name of Hugh McCaffrey, during the fiscal years of 1896 and 1897.

[SEAL.]

H. H. DARNEILLE,
Assessor, D. C.

S. T. K.

A. C. K.

42

Final Decree.

Filed April 8, 1903.

In the Supreme Court of the District of Columbia, April 8, 1903.

WILLIAM H. McCAFFREY ET AL.	} In Equity. No. 23390.
vs.	
LIZZIE C. MANOGUE ET AL.	

This cause came on to be heard at March term 1903, of the court, upon the pleadings, testimony, and all proceedings had herein, and was argued by counsel; (and it appearing to the court that under the last will and testament of Hugh McCaffrey, deceased, bearing date April 30, A. D. 1896, and duly admitted to probate and record, as a will of both realty and personalty, in this court holding a special term as a probate court, the several devisees therein named took and acquired each only an estate for his or her life respectively in the several and respective pieces and parcels of real estate therein devised, and not an estate in fee simple, and that neither of said devisees was enlarged from such life-estate to a fee simple by reason of anything in said will contained, or by reason of any charge made or duty imposed, in and by the terms thereof, upon Mary A. Quigley, one of the devisees therein named, as contended in the bill of complaint herein;) thereupon, upon consideration thereof, it is, by the court, adjudged, ordered and decreed:

1. That, under said last will and testament, the late Francis T. McCaffrey, one of the devisees therein named, took and acquired
43 only an estate for his life in the certain property therein given and bequeathed to him, to-wit: house No. 519 East Capitol street, and the lot on which it stands, the same being a part of lot numbered twenty (20), in square numbered eight hundred and forty-one (841) in the District of Columbia; and,

2. That, under said last will and testament, the complainant William H. McCaffrey, being another of the devisees therein named, took and acquired only an estate for his life in the certain property therein given and bequeathed to him, to-wit: house No. 604 East Capitol street, and the lot on which it stands, being part of lot numbered ten (10) in square numbered eight hundred and sixty-eight (868), in the District aforesaid.

And it is, thereupon, further, adjudged, ordered and decreed, that each party to pay his or her costs to this time, to be taxed by the clerk, and to be hereafter apportioned by the court among the several parties to this suit.

A. B. HAGNER,
Asso. Justice.

Motion to Amend Decree, &c.

Filed April 23, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. MCCAFFREY ET AL., Plain-	} In Equity. No. 23390.
tiffs,	
vs.	
LIZZIE C. MANOGUE ET AL., Defendants.	

And now come the defendants Edward Quigley, Catherine
 44 L. Quigley, Margaret Quigley, Joseph Quigley and Mary
 Quigley, the last two by their guardian *ad litem*, Edward
 Quigley, and move the court to amend its decree herein by striking
 out therefrom the recital to the effect that it appeared to the court
 that none of the devisees took under the will any more than a life
 estate. This motion being based on the grounds following, to wit:

1. That it is contrary to the rules of the court to embrace any
 such recital in its decree.

2. That the bill did not ask any decree except as to the property
 devised to Frank McCaffrey and William H. McCaffrey; and the
 court had no jurisdiction in this cause to determine by recital or
 otherwise the title to any property except that described in the bill.

3. That the devises to Frank and William H. McCaffrey stood
 upon a different and secondary basis from that to Mrs. Quigley, and
 that no question was raised in this suit as to her right to her prop-
 erty as in fee simple.

HALLAM & HALLAM,
Solicitors for said Quigleys.

To Messrs. Edwin Forrest and A. A. Hoehling, attorneys for Lizzie
 C. and George Manogue; Mr. Oscar Luckett, guardian *ad litem*
 for Frank Foley:

Take notice that the above motion will on Friday, April 24, 1903,
 at 10 o'clock a. m., or as soon thereafter as counsel can be
 45 heard, be called up in equity court No. 1 Justice Hagner,
 presiding.

HALLAM & HALLAM,
Solicitors for said Quigleys.

Service accepted by receipt of copy, April 21, 1903.

EDWIN FORREST,
Of Counsel for Manogues.
 OSCAR LUCKETT,
Guardian ad Litem for Frank Foley.

April 21, 1903.

Order Overruling Motion.

Filed April 24, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCaffrey ET AL.	} In Equity. No. 23390.
vs.	
LIZZIE C. MANOGUE ET AL.	

This cause coming on to be heard upon motion filed herein on April 22d. 1903, to amend the decree made in this cause by striking therefrom the parts thereof recited in said motion, and the same having been duly considered by the court, it is this 24th day of April, 1903 ordered that said motion be and the same hereby is overruled.

A. B. HAGNER,
Asso. Justice.

46

Order for Appeal.

Filed April 24, 1903.

In the Supreme Court of the District of Columbia.

WILLIAM H. McCaffrey ET AL.	} In Equity. No. 23390.
vs.	
LIZZIE C. MANOGUE ET AL.	

And now come the plaintiffs William H. McCaffrey and James B. McCaffrey and the defendants Edward Quigley, Catherine L. Quigley, Margaret Quigley, Joseph Quigley and Mary Quigley, the last two by their guardian *ad litem*, Edward Quigley, and note an appeal in open court from the decree rendered April 8, 1903 and it is ordered that the bond on appeal be fixed at \$100 or a deposit of of \$50 in lieu thereof. This 24th day of April 1903.

A. B. HAGNER, *Justice.*

Memorandum.

May 1, 1903.—Appeal bond filed.

47

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 46, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 23,390, equity, wherein William H. McCaffrey *et al.* are complainants, and Lizzie C. Manogue *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at the
of the District of city of Washington, in said District, this 11th
Columbia. day of May, A. D. 1903.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1318. William H. McCaffrey *et al.*, appellants, vs. Lizzie C. Manogue *et al.* Court of Appeals, District of Columbia. Filed May 11, 1903. Robert Willett, clerk.

Court of Appeals, District of Columbia

APRIL TERM, 1903.

No. 1318.

WILLIAM H. McCAFFREY ET AL.

vs.

LIZZIE C. MANOGUE ET AL.

BRIEF FOR APPELLEES MANOGUE.

THE CASE.

The bill in this case was filed by William H. McCaffrey and James B. McCaffrey, sons of the late Hugh McCaffrey and devisees under the will of the late Frank T. McCaffrey, to construe the will of Hugh McCaffrey, which, among other things, contains the following provisions:

"I give and bequeath to my daughter Mary A. Quigley house number 301 at southwest corner of 11th and C streets southeast, being in lot number 5, in square 970, with the store and dwelling, stock and fixtures, and lot on which it stands, also houses numbers 13 and 15 6th street southeast with lots on which they stand, being parts of lots 19 and 20 in square number 841, also any money in bank to my account at the time of my death, also any money due to me, also any building association stock. She is to pay funeral

expencies and any other legal debts I may owe, also to care for my lot in Mount Olivet cemetrey.

"I give and bequeath to my son, James B. McCaffrey, house number six hundred and two (602) East Capitol street and lot on which it stands, being in lot number ten (10) in square number eight hundred and sixty-eight (868).

"To my son, William H. McCaffrey, I give and bequeath house 604 East Capitol street being in lot number ten (10), in square number eight hundred and sixty-eight (868) and lot on which it stands.

"To my daughter, Lizzie Manogue, I give and bequeath house number fourteen hundred and twenty-three (1423) Corcoran street N. W., and lot on which it stands, being lot number fifty-four (54) in square number two hundred and eight (208).

"To my son, Francis T. McCaffrey, I give and bequeath house five hundred and nineteen (519) East Capitol street, and lot on which it stands, being part of lot number twenty (20) in square eight hundred and forty-one (841), also my horse and buggy.

"To my grandson, Joseph Quigley, my watch and chain."

The contention is made that by the clauses quoted the devisees named took an estate in fee and not a life estate (*R.*, 2-6). The defendant Lizzie C. Manogue filed answer, claiming that under said devise the parties named only took a life estate, and the defendant George W. Manogue submitted the question to the determination of the court. After replication, testimony was taken which showed, among other things (*R.*, 15-16), that the personal estate of Hugh McCaffrey was more than sufficient to pay his debts, and that Mary A. Quigley or her estate received the surplus, amounting to over two thousand dollars.

On hearing, the court decreed that the complainants acquired only an estate for their respective lives in the certain property devised to them by the will of their father, and in a formal recital in said decree in construing the will, as asked for by the bill of complaint, the decree recited that the respective devisees under the will alluded to took and

acquired each only an estate for his or her life, and that neither of the devisees was enlarged from a life estate to an estate in fee-simple by reason of anything in the will contained or by reason of any charge made or duty imposed upon Mary A. Quigley, one of the devisees (*R.*, 23).

From this decree an appeal was taken by the appellants (*R.*, 25).

ERRORS ASSIGNED.

The appellants assign as error :

1. The decree adjudging that Francis T. McCaffrey and William H. McCaffrey acquired only an estate for life and not an estate in fee-simple in the property devised to each of them under the will of Hugh McCaffrey ;

2. The appellants Quigley assign as error the recital in the decree ; and

3. The order overruling the motion to amend the decree by striking out such recital.

BRIEF.

Bearing in mind that the will of Hugh McCaffrey, here under consideration, contained no words of limitation or inheritance, the following propositions and questions are presented by the present appeal :

1. The language of each of the several devises, standing alone and unaided by resort to legal implication, admittedly pass but a life estate.

2. Does the direction that Mary A. Quigley pay funeral expenses and debts have the effect of enlarging the life estate in the real estate devised to her to a fee-simple ?

3. If it has, does that enlargement by implication extend to the other devises containing no such direction ?

4. Is the recital contained in the decree unauthorized by law or forbidden by the rules of court ?

The propositions and questions will be considered in the order stated.

I.

A DEVISE WITHOUT WORDS OF LIMITATION OR INHERITANCE
PASSES ONLY A LIFE ESTATE.

This proposition apparently is not, and certainly cannot be, successfully controverted. The authorities sustaining it are uniform in every jurisdiction, and the same rule of decision obtains here, with the exception only of cases coming within the provisions of the Code, of which, however, the case at bar is not one.

2 Jarman on Wills, p. 267.

2 Redfield on Wills, p. 321.

Farrar *vs.* Ayres (5 *Pick.*, 404).

McAleer *vs.* Schneider (2 *App. D. C.*, 461).

McCaffrey *vs.* Little (20 *id.*, 116).

Wright *vs.* Denn (10 *Wheat.*, 204, 236, 237).

And this is so notwithstanding the testator in the will may have declared an intention to dispose of his whole estate (2 Jarman on Wills, p. 267; Wright *vs.* Denn, *supra*), although here there is absolutely no expression by testator of any intention to dispose by will of his entire estate in the property, nor does he attempt to dispose by will of his entire property.

II.

IS THE DEVISE TO MARY A. QUIGLEY ENLARGED BY LEGAL
IMPLICATION TO A FEE?

Admitting the first proposition, appellants reply that Mary A. Quigley took her devise *charged*, either in respect of the real estate devised to her or in respect of her personally as a *devisee*, with the payment of funeral expenses and debts of testator, and that therefore her devise is by legal implication *enlarged* to a fee.

In discussing this particular contention, the fact that said devisee was, in the same connection, requested or directed by testator to “*care* for my lot in Mt. Olivet cemetery” is of no importance.

Such direction, indefinite alike both as to quantum or object, as well also invalid, constitutes neither a trust nor charge enforceable against the devisee (*Buggens vs. Yeates*, 8 Vin. Abr., 72; 1 Jarman on Wills, p. 387 *et seq.*, and cases cited).

This will has heretofore received consideration by this court (*McCaffrey vs. Little*, *supra*), and it was apparently then contended by appellants that the charge was upon the land devised, and that such charge would operate to enlarge the estate, by implication, to a fee, the case of *Cook vs. Holmes* (11 Mass., 529) being then relied upon in support of the contention.

This court, however, called attention to the fact that other cases draw a distinction between a charge of debts upon lands devised, as not having the effect of enlarging the devise, and a charge of debts upon the devisee personally, in which latter case such authorities sustain the contention.

The appellants, both below and here in this case, have apparently shifted the claim so asserted when the case was here before, and now contend that the devisee, Quigley, is charged *personally* with the payment of funeral expenses and debts.

It is quite clear under the authorities that unless the claim last asserted can be made applicable to the real facts of the case, the doctrine asserted in *Cook vs. Holmes* will furnish no support to appellants’ case, as that decision is in conflict with the uniform current of authority in this country.

The true rule of decision will be found stated in *Wright vs. Denn* (*supra*), in an exceedingly able and instructive opinion by Mr. Justice Story.

There the court expressly held that a charge of legacies on lands devised would not enlarge the devise to a fee, and held, further, that a devise of “all and singular my lands,

messuages and tenements, * * * freely to be possessed and enjoyed," passed an estate for life only.

In the case of *Jackson vs. Harris* (8 *Johnson N. Y.*, 142) the devise under consideration was in the following words:

"To my beloved son Henry * * * all this certain lot of land, which I now possess, and is known by No. 136, together with all my farming utensils. and likewise the 108 stock belonging to my estate."

Then followed specific legacies, all of which were directed by testator "to be raised and levied out of my estate."

The court, in its opinion, stated:

"If the personalty was sufficient to pay the legacies, that fund must first be resorted to; for it is the natural and legal fund for the payment of debts and legacies."

It was accordingly there held that the estate was not enlarged to a fee.

In the case of *Burlingham vs. Belding* (21 *Wend.*, 463) testator bequeathed certain personal property to his wife for life, and after her death to his son "Lawrence, *who is to take care of his mother during her natural life.*"

Following that provision was a devise of certain land, without words of perpetuity, to his son Silas, and then followed a devise of the land in suit to his said son Lawrence, likewise without words of perpetuity.

It was there contended that the charge upon the son Lawrence, "to take care of his mother during her natural life," enlarged the devise to him of the real estate to a fee; but the court declined to so rule, and held what is thus accurately expressed in the syllabus:

"A devise of lands without words of perpetuity, in a will made previous to the Revised Statutes, will not be construed to give a *fee by implication*, although there be a *personal charge* imposed upon the devisee, if there be a *fund other than the realty*, to which the devisee may look for indemnity, and in immediate connection with which the charge is imposed."

In this connection attention is asked to the case of *Turnburke vs. Parker* (2 *MacA.*, 444), where it was held that a charge of legacies (*i. e.*, debts) upon land will not exonerate the personal estate, unless the will shows a clear intention to so change this pecuniary liability—the personalty being the fund primarily responsible for debts (legacies).

The case of *Moor vs. Mellor* (5 *Dumford & East*, 284) involved the construction of a will containing the following devise :

“*All the rest of my lands, tenements and hereditaments, either freehold or copyhold, whatsoever and wheresoever, and also all my goods, chattels and personal estate of what nature or kind soever, after payment of my just debts and funeral expenses, I give, devise and bequeath the same unto my wife, Sissily Carr; and I do hereby nominate and appoint her, my said wife, sole executrix of this my will.*”

There the same contention was urged as here, and couched in almost identical words :

“*This estate is subjected to debts in the hands of the devisee, and therefore she must take a fee. Every devisor is supposed to mean a benefit to the devisee. * * * In questions of this kind, courts have never examined the comparative value of the charge and the estate charged : it is sufficient if by possibility the devisee may be a loser by taking only an estate for life. * * * The devise of the real and that of the personal estate are coupled together, and this charge is annexed to both*” (p. 286).

The court, however, overruled the contention, stating in conclusion :

“*Whatever our conjectures may be, (and privately speaking I think the devisor meant to give an estate in fee to his wife,) we are not at liberty to follow those conjectures, but are compelled by the authorities to say that she only took an estate for life under her husband’s will*” (p. 288).

The case was then taken to the Court of Exchequer Chamber, where the judgment of the Court of King’s Bench

(*supra*) was reversed (1 *Bosanquet & Puller*, 558); whereupon it was removed to the House of Lords upon writ of error, where the first judgment, that of the Court of King's Bench, was reinstated and affirmed. The opinion of the judges, delivered by Macdonald, Ch. B., concluded:

"I am of opinion that * * * the weight of authority obliges me to conclude that Sissily Carr took only an estate for life" (2 *Bosanquet & Puller*, 247, 253).

While it is true that this court did not find it necessary to directly settle the question here involved when this will was before it in *McCaffrey vs. Little* (*supra*), yet it did find the question of the enlargement of life estate to a fee so doubtful as to justify the release of a purchaser at judicial sale.

The case of *West vs. Fitz* (109 *Ill.*, 438), cited by appellants, is neither useful nor instructive, since the opinion there points out that the omission of words of limitation or inheritance "is wholly without significance, either in a deed or will," by virtue of the provisions of the law of that State (p. 436).

In the case of *Abbot vs. Essex Co.* (18 *How.*, 170) almost wholly relied upon by appellants, the will devised certain real estate, described as "*all my lands and buildings*," and also certain personal estate, to his two sons, John and Jacob, to be divided equally between them. The son John was appointed executor, and *in consideration* of the above provisions for said two sons the said executor was ordered to see that all just debts, funeral charges, and legacies be paid out of that part of the estate given to said two sons. The will also directed that the share of the one of the sons who should die first, without lawful heirs, should accrue to the survivor and his heirs.

The court held that the description of the devise employed in the will, namely, "estate" or "that part of my estate," was sufficient to carry the whole interest of the testator in the subject of the devise, namely, a fee. The opinion added

that, moreover, the intention of a testator must be drawn from the whole context of his will. It further found that the son John was charged *personally* with the payment of all debts and legacies, the testator calling it the "consideration" to be paid for that part of the estate given.

It thus appears that neither of the two cases relied upon by appellants is here controlling, whereas the cases hereinabove cited on behalf of appellees conclusively establish the true rule of decision governing the case at bar.

The situation in this case is substantially this: Testator, having given his daughter, Mary, practically all of his personal estate—in fact, all except a horse and buggy and watch and chain, but which the testimony shows he disposed of to a son before his death—very naturally and properly added that (out of the personal estate) she should pay his funeral expenses and debts. The personal estate so given her was largely in excess of funeral expenses and debts; in fact, she and her estate received something over \$2,000 after the collectors and executors had paid the funeral expenses and debts. The administration of the estate shows that said debts were discharged in the usual and proper (legal) manner, namely, the collectors and executors discharged and paid them out of the personal estate (the fund primarily liable) and turned over to the legatee the balance.

It is forced, not to say strained, reasoning to pretend, in this case, that the charge was upon either land or devisee. The direction to pay debts was in immediate connection with the gift of the personalty.

The provision for paying debts was in no sense or way the result of the devise of the land.

It is submitted that the devise to Mary A. Quigley cannot be enlarged, by implication, to a fee.

III.

EVEN IF THE QUIGLEY DEVISE IS SO ENLARGED, THE OTHER
DEVISES IN THE WILL ARE NOT AIDED THEREBY.

Appellants assert, first, that the Quigley devise was enlarged to a fee; and, second, that that enlargement must likewise be held to extend to the other devises contained in the will, and this notwithstanding the fact that such other devises contain no conditions or limitations whatever; and, in support of that contention, the case of *Butler vs. Butler* (2 *Mack.*, 96-104) is cited. That case was totally different in its facts, involving the question of construction merely, having no relation whatever to an enlargement of an estate by legal implication because of any charge made in respect of the devise, or in respect of the devisee, and has here no useful application.

Appellants also cite the case of *Cook vs. Holmes* (*supra*) as being here precisely in point and decisive of the question. A mere reading of the opinion in that case will show that it is in no sense decisive of the question, since there the testator had expressly announced that the purpose of his will was to make *equal* provision for the several beneficiaries, and the court simply made that declaration of intention effective.

Hence, in the present case, it cannot be said that any one devise is given character by any other, and inasmuch as said other devises contained no words of limitation or inheritance and cannot be extended by legal implication, it must necessarily result that they respectively passed a life estate only.

IV.

THE DECREE IS NOT OBJECTIONABLE BY REASON OF ANY RECITALS THEREIN.

Objection is urged, by certain of the appellants, as to the form of decree in this case, in that it is therein recited that the several devisees took and acquired each only a life estate for his or her life, respectively, and that none of said devises was enlarged to a fee by reason of anything in the will contained; or by reason of any charge made or duty imposed upon Mary A. Quigley, as contended in the bill of complaint (*R.*, 23).

This objection, it is submitted, is without merit, being purely technical, and based upon a rule of court which provides that "no prior proceeding" shall be recited or stated in a decree.

The bill was filed specifically praying for the construction of the will of Hugh McCaffrey, and in the averments thereof it will be found stated that:

"Because there was by the said will imposed upon the said Mary A. Quigley the personal duty to pay his funeral expenses and the legal debts of the testator, an estate in fee-simple passed to her * * * although there *was* in said devise no words of inheritance, and * * * such intention must be found to have existed in respect to the several other devises so by said will made."

The question principally argued before the justice below was whether or not the devise to Mary A. Quigley was enlarged to a fee, that question being of prime importance in order to a determination of the remaining questions.

In a suit, the only purpose of which is the construction of a will, it is, to say the least, difficult to see just how a court could enter a decree without in some way stating the true construction and applying that conclusion to the particular subjects-matter to be adjudicated.

This is all that was done in the present decree, and it would seem to be unobjectionable, so far as its recitals are concerned.

The further objection urged by appellants, namely, alleged error of the court in overruling motion to modify the decree by striking therefrom the recitals above referred to, needs no comment, as it is not an appealable order, as has been repeatedly held by this court; and, even if it were, no appeal was taken therefrom (*R.*, 25).

The decree below is right, and should be affirmed.

Respectfully submitted.

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